UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,438	12/03/2001	Liming Yu	TNX95-02ABB	8540

26839 7590 04/19/2006

TANOX, INC.
10301 STELLA LINK
HOUSTON, TX 77025

EXAMINER	
CHANDRA, GYAN	
ART UNIT	**PAPER NUMBER**
1646	

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/005,438	Applicant(s) YU ET AL.	
	Examiner Gyan Chandra	Art Unit 1646	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *14-16,18 and 19*.
   Claim(s) withdrawn from consideration: *17 and 20-22*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 08/25/2005
13. ☐ Other: _____.

Continuation of 11 does not place the application in condition for allowance because:

Claims 14-22 are pending and claims 17, 20-22 are withdrawn from further consideration as being drawn to a non-elected invention.
Claims 14-16 and 18-19 are under examination.
Applicant has submitted previously missing references from the application file and these reference are considered.

Applicant's Response to Final Rejection filed on 03/14/2006 is acknowledged.
The rejection of claims 14 -16, and 18-19 under 35 U.S.C. 112, first paragraph, is withdrawn due to the amendment of claim 14 as filed on 3/14/2006.

The rejection of claims 14 -16, and 18-19 under 35 U.S.C. 112, first paragraph-enablement, is withdrawn due to the amendment of claim 14.

The rejection of claims 14 -16, and 18-19 are rejected under the judicially created doctrine of obviousness-type double patenting, is maintained as being unpatentable over claims 1-4 of U.S. Patent No. 5,723,125 in view of Peterhans et al. for the reasons of record. Applicants agree to submit a Terminal Disclaimer (TD) upon case is determined for the allowance.

The rejection of claims 14-16 and 18-19 under 35 U.S.C. 103(a), is maintained as being unpatentable over Landolfi (IDS, U.S. Patent 5, 349,053) in view of Frencke (EP 467416) or Peterhans et al (Analytical Bioch. 163:470-475, 1987) for reasons of records.

Applicants argue that individual references do not provide motivation to combine them and submit a second argument of unexpected results. They argue that Frencke (EP467416) only reported a 12 fold increase in half-life of interferon a : IFG complex and that Landolphi patent did not disclose a fold increase in IL-2-Ig complex. Therefore, the instant invention demonstrates an unexpected result.

Applicant's arguments have been fully considered but they are not persuasive because Frincke et al teach that in order to overcome with problems of a short half-life and multiple dosage of a drug, one should combine proteins with an appropriate antibody that increases the half-life of a protein (column 1, lines 24-68 through column 2, lines 1-22). They report a 12-fold increase in interferon half-life when the interferon is in a complex with a monoclonal antibody with which it binds. Landolphi et al teach making a fusion of immunoglobulin Fc fragment with any ligand molecule (such as interleukin-2) and suggest that ligand molecule is typically linked directly by a peptide bond (column 2, lines 50-58). Therefore, it would have been obvious to experimentally to make a fusion of interfereon alpha with Ig Fc and to determine the increased half life the fusion protein.
In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Eileen B O'Hara

EILEEN B. O'HARA
PRIMARY EXAMINER